

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

RICHARD E. KENNEDY,

Plaintiff,

v.

**CIVIL ACTION NO. 3:05CV22
(BROADWATER)**

**JO ANNE B. BARNHART,
Commissioner, Social Security
Administration,**

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge John S. Kaull, dated April 12, 2006, and the Plaintiff's objections thereto filed on April 20, 2006. In the interests of justice and in accordance with 28 U.S.C. § 636(b)(1), the Court has conducted a *de novo* review of the issues raised in Plaintiff's objections.

The Court, after reviewing the above, is of the opinion that the Magistrate Judge's Report and Recommendation should be and is hereby **ORDERED** adopted. Plaintiff's objection, that there are not a significant number of available jobs in the national economy because the Administrative Law Judge (ALJ) determined that the Plaintiff cannot stand for two thirds of a work day, is without merit. The Report and Recommendation cited the ALJ's finding that the Plaintiff is capable of, "standing or walking for six hours of an eight-hour workday." Document No. 13 at 29; R 20.

The Plaintiff's second objection is that the Magistrate's erred by accepting the ALJ's analysis of the medical record. Plaintiff argues that the ALJ did not give appropriate weight to the findings of Plaintiff's treating physicians. Upon *de novo* review of Plaintiff's medical records, the Court finds that there is substantial evidence to support the ALJ's findings. Accordingly, the Magistrate's

adoption of the ALJ's findings is well founded.

The Court, therefore, **ORDERS** that the Defendant's Motion for Summary Judgment¹ be **GRANTED**. The Court **ORDERS** that Plaintiff's Statement of Errors² be **DENIED**. It is further **ORDERED** that this action be **DISMISSED WITH PREJUDICE** based on the reasons set forth in the Magistrate Judge's Report and Recommendation, and **STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit true copies of this Order to the petitioner and all counsel of record herein.

DATED this 4th day of May 2006.


W. CRAIG BROADWATER
UNITED STATES DISTRICT JUDGE

¹ Document No. 11

² Docket number 13.